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5 IN THE UNITED STATES DISTRICT COURT  
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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8 In re: JDS UNIPHASE CORPORATION  
9 SECURITIES LITIGATION

No. C-02-1486 CW (EDL)

**ORDER DENYING DEFENDANT  
KALKHOVEN'S MOTION TO STRIKE  
REBUTTAL REPORT OF SEYHUN AS  
TO TRADING BY KALKHOVEN AND  
GRANTING THE JDSU DEFENDANTS'  
MOTION TO STRIKE AS TO TRADING  
BY STRAUS, MULLER AND ABBE**

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11 This document relates to ALL ACTIONS  
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14 Defendant Kalkhoven moved to strike the Rebuttal Report of Plaintiffs' expert, Professor  
15 Seyhun, in its entirety and the JDSU defendants moved to strike those portions of the same report  
16 referring to trading in JDSU stock by his JDSU co-defendants. Kalkhoven's opening expert report  
17 by Professor Guay opined that Kalkhoven's trading patterns were consistent with the objective of  
18 diversification and liquidity, as evidence that Kalkhoven did not improperly trade on insider  
19 information. The report did not address trading by any of the JDSU co-defendants. The report by  
20 Professor Seyhun opines that no evidence shows that Kalkhoven actually did achieve diversification  
21 or liquidity and that his sales of JDSU stock are consistent with profiting from inside information.  
22 Plaintiff's report attempts to bolster the latter conclusion with correlations between Kalkhoven's  
23 trading patterns and those of his JDSU co-defendants.

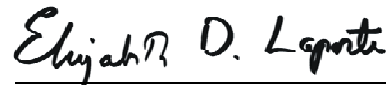
24 The question whether the Seyhun report is proper rebuttal insofar as it addresses Kalkhoven  
25 is a close one; the better practice would have been to disclose the report initially. Nonetheless, the  
26 Seyhun report does respond to and attempt to refute the opinions in the Guay report about the  
27 rationale for Kalkhoven's trading in JDSU stock. The Seyhun report crosses the line, however, in  
28 attempting to tie the subject of the co-defendants' trading in JDSU stock to the coattails of Guay's

1 analysis of Kalkhoven's trading, when that analysis makes no mention of the co-defendants.  
2 Accordingly, Kalkhoven's motion to strike is denied as to the portions of the Seyhun report  
3 addressing his trading, but the motions of Kalkhoven and JDSU are granted as to the portions of the  
4 report addressing trading by Straus, Miller and Abbe.

5 Further, Kalkhoven's request in the alternative that he be allowed to submit a rebuttal to the  
6 portions of the Seyhun report that remain is granted, given the closeness of the issue, provided that it  
7 is produced promptly. In particular, since Kalkhoven has already had the Seyhun report for some  
8 time and it is relatively straightforward, the rebuttal report must be provided by April 5, and the  
9 rebuttal expert must be made available for deposition on or before April 12.

10 IT IS SO ORDERED.

11 Dated: March 28, 2007

  
ELIZABETH D. LAPORTE  
United States Magistrate Judge